

Change of Venue in California

What is change of venue?

Change of venue is the removal of a legal action begun in one county to another county for trial. In criminal cases a change of venue will be permitted if, for example, the court believes the defendant cannot receive a fair trial in a given county.

How is the Administrative Office of the Courts (AOC) involved in change of venue?

The AOC's duty to provide assistance with change of venue in criminal actions is set forth in rules 840–844 of the California Rules of Court, adopted by the Judicial Council of California in 1972 in compliance with Penal Code section 1038. The AOC provides assistance when a court in which a criminal action is pending determines that the action should be transferred under section 1033 or 1034 of the Penal Code. Section 1033 states the grounds for change of venue in a superior court criminal action; section 1034 states the grounds for change of venue in a municipal court criminal action.

What is the change of venue procedure?

Section 4(a) of the California Standards of Judicial Administration and an accompanying comment recommend that the court attempt to impanel a fair and impartial jury before ordering a change of venue, unless there is clear evidence of a reasonable likelihood that a fair and impartial trial cannot be had in the county. Section 4(b)

states that the court, after ordering a change of venue, should consider whether bringing in a jury from another county would be in the interest of the administration of justice, including convenience of the jurors, under Penal Code section 1036.7, rather than transferring the case.

Once the motion to change venue is granted, the following occurs:

1. The judge who grants the motion advises the AOC of the pending transfer and requests assistance in finding courts that are able to provide suitable facilities for the trial. The judge also describes the circumstances of the case, explains the basis for the transfer, and suggests possible appropriate sites for the trial.
2. The AOC contacts presiding judges or court administrators of appropriate courts, with the guidance of the judge who granted the change of venue motion, to identify a court or courts that have suitable space and would not be unduly burdened by the trial of the case. The AOC discusses with the courts the circumstances of the case, the trial's probable length, any special security problems, and any other factors that might appropriately be considered. The relative workload of the court and the opinion of the presiding judge regarding the court's ability to conduct the trial also are considered.

3. The AOC advises the judge who granted the motion of one or more courts that would not be unduly burdened by the trial.
4. The judge then conducts a hearing as required by *McGown v. Superior Court* (1977) 75 Cal.App.3d 648, considers the views of the prosecution and the defense, and determines the proper court for the trial of the case.
5. Having decided on the change of venue county, the court notifies the AOC of the choice of court. The AOC then advises each of the courts previously contacted.

Why change the venue?

Some reasons for change of venue are pretrial publicity, bias, the political atmosphere, or any other reason that the parties believe would prevent them from obtaining a fair trial in the county where the case was originally filed.

Are demographics a consideration when moving trials from the county of original jurisdiction?

Many factors are considered in determining a suitable court site, among which may be demographic characteristics. Attempts to legislate this consideration failed in 1992 and 1993. In 1993, the Governor vetoed Senate Bill 159, which would have authorized superior courts that have ordered a trial moved because of publicity to hold a hearing to determine the ethnic or gender characteristics the county receiving the trial should have.

In 1992, the Governor vetoed Senate Bill 1427,

which would have required judges to hold evidentiary hearings before choosing a new location, comparing the demographic makeup of the county of original jurisdiction with those proposed as new sites. In vetoing the measure, Governor Wilson said:

“The predicate of this bill is the assumption that gender or membership in an ethnic group, or age group, or some other demographic classification, is more important as a determinant of individual juror performance than the character and conscience of the individual juror. I reject that assumption as flawed in logic, belied by our American experience, and counter to the time-tested assumptions underlying centuries of Anglo-American jurisprudence.”

Does the AOC decide whether a change of venue should occur?

No.

Does the AOC select the site for the new trial?

No. The AOC provides administrative assistance to the trial courts once the change of venue motion has been granted.

How soon does the AOC contact alternative courts?

Larger courts being considered as alternative sites for change of venue cases generally are contacted about 90 days before the trial date. Other courts are contacted much later in the process, closer to the trial date.

How many alternative sites does the AOC provide the court of original jurisdiction?

The number of options depends on which courts indicate they can take the case. Generally, the AOC offers two or three alternative sites.

How long does it take for the AOC to identify alternative sites?

It depends on how long it takes to reach the appropriate person in each court, how long it takes for the person to get back to the AOC and resolve any local scheduling or space problems, and whether the nature of the case makes it difficult to find a suitable court. In all instances, however, the AOC attempts as expeditiously as possible to determine alternative court sites.

How long after alternative sites are determined does it take the judge to select a county?

The timing of the decision depends on the judge. The judge will discuss alternatives with the parties' counsel.

Who serves as the trial judge—the judge from the court where the trial originated or the judge from the receiving court?

Because of the burden on receiving courts, section 4.1 of the Standards of Judicial Administration states that change of venue cases should be tried by judges from the originating courts, unless the originating and receiving courts agree otherwise. Sometimes a retired judge will be assigned to the case.

Who pays the salary of a judge who is assigned specifically to a change of venue case?

The state pays the judge's entire salary for the days the judge actually is in court.

What are the costs of change of venue?

The costs vary considerably, depending on where the case is sent. Section 4.2 of the Standards of Judicial Administration, "Guidelines for

reimbursement of costs in change of venue cases—criminal cases," gives an idea of costs for which courts may be responsible. Consistent with Penal Code section 1037(c), the guidelines indicate that the county in which an action originated should reimburse the county receiving the case for any ordinary expenditure and any extraordinary but reasonable and necessary expenditure that would not have been incurred by the receiving county but for the change of venue. The guidelines detail reasonable ordinary expenditures—court-related; reimbursable ordinary expenses—defendant-related; reimbursable ordinary expenditures—defense expenses; extraordinary but reasonable and necessary expenses; nonreimbursable expenses; and miscellaneous expenses.

Does the AOC provide similar assistance in civil cases when a change of venue motion is granted?

The above discussion relates only to criminal cases. Although no statute or rule requires the agency to assist the trial courts in civil change of venue, assistance will be provided if the judge granting the motion or the presiding judge requests it.

The 27-member Judicial Council is the governing body of the California courts, the largest and busiest court system in the nation. Under the leadership of the Chief Justice and in accordance with the California Constitution, the council is responsible for ensuring the consistent, independent, impartial, and accessible administration of justice. The Administrative Office of the Courts serves as the staff agency to the council.